



OFFICE OF THE ATTORNEY GENERAL • STATE OF TEXAS
JOHN CORNYN

August 30, 1999

Ms. Cary L. Bovey
City Attorney
City of Llano
309 East Main Street
Round Rock, Texas 78664-5246

OR99-2428

Dear Ms. Bovey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127137.

The City of Llano (the city) received a request for all information concerning the work and job performance of a former city employee, Mr. Frank Salvato, and for a specific settlement agreement involving the city and Stacey Nobles. You state that you will release much of the requested information. You also inform us that you have released other documents with portions redacted which reflect the employee's social security number, home address and phone, and family member information. Because you do not seek to withhold the requested settlement agreement, we presume that this document, if it exists, will be provided to the requestor. You claim that the city must withhold certain portions of the requested information under sections 552.101, 552.102, 552.117, and 552.130 of the Government Code. You have provided this office for review the information you seek to withhold. You have specifically marked the information you seek to withhold and indicated with particularity which exception is applicable.

You first claim the portions of the submitted documents and six documents in their entirety must be withheld under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. First, federal tax return information, including employee W-4 forms, are confidential under federal law. 26 U.S.C. § 6103(a). Therefore, the city must withhold federal tax return information. Open Records Decision No. 600 (1992). Second, one of the documents you submitted to this office for review is an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not

be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Public Information Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, the Form I-9 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses common-law and constitutional privacy. Common-law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and information concerning the intimate relations between individuals and their family members. *See* Open Records Decision No. 470 (1987). We have reviewed the information you have

marked and agree that three pages must be withheld in their entirety. Open Records Decision Nos. 600 (1992) (personal financial information), 455 (1987) (specific medical information) You additionally claim that one of these pages is protected from disclosure under the Medical Practices Act, article 4495b of Vernon's Texas Civil Statutes. *See* Open Records Decision No. No. 598 (1991). Because we make a determination under common-law privacy, we need not address this argument. We have marked the information that must be withheld under a right of privacy.

You have also marked certain information that must be withheld under section 552.117. Section 552.117 of the Government Code provides that information may be withheld if it is:

information that relates to the home address, home telephone number, social security number, or that reveals whether the following person has family members:

* * * *

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

You explain that the former employee is a peace officer. You must withhold, under section 552.117, the information that you have marked that reveals the peace officer's home address, home telephone number, social security number, and family member information. Code Crim. Proc. art. 2.12; Open Records Decision Nos. 532 (1989), 530 (1989); *see* Open Records Decision No. 622 (1994).

Finally, you claim that some of the requested information must be withheld under section 552.130. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

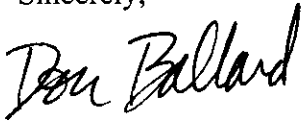
* * * *

(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

You must withhold the information you have marked under section 552.130.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 127137

Encl. Submitted documents

cc: Ms. Veronika Grady
Pittman & Fink, P.C.
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Austin, Texas 78705
(w/o enclosures)